

§ 890.1001

5 CFR Ch. I (1–1–08 Edition)

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GENERAL PROVISIONS AND DEFINITIONS

§ 890.1001 Scope and purpose.

(a) *Scope.* This subpart implements 5 U.S.C. 8902a, as amended by Public Law 105–266 (October 19, 1998). It establishes a system of administrative sanctions that OPM may, or in some cases, must apply to health care providers who have committed certain violations. The sanctions include debarment, suspension, civil monetary penalties, and financial assessments.

(b) *Purpose.* OPM uses the authorities in this subpart to protect the health and safety of the persons who obtain their health insurance coverage through the FEHBP and to assure the financial and programmatic integrity of FEHBP transactions.

§ 890.1002 Use of terminology.

Unless otherwise indicated, within this subpart the words “health care provider,” “provider,” and “he” mean a health care provider(s) of either gender or as a business entity, in either the singular or plural. The acronym “OPM” and the pronoun “it” connote the U.S. Office of Personnel Management.

§ 890.1003 Definitions.

In this subpart:

Carrier means an entity responsible for operating a health benefits plan described by 5 U.S.C. 8903 or 8903a.

Community means a geographically-defined area in which a provider furnishes health care services or supplies and for which he may request a limited waiver of debarment in accordance with this subpart. *Defined service area* has the same meaning as community.

Contest means a health care provider’s request for the debarring or suspending official to reconsider a proposed sanction or the length or amount of a proposed sanction.

Control interest means that a health care provider:

(1) Has a direct and/or indirect ownership interest of 5 percent or more in an entity;

(2) Owns a whole or part interest in a mortgage, deed of trust, note, or other

obligation secured by the entity or the entity’s property or assets, equating to a direct interest of 5 percent or more of the total property or assets of the entity;

(3) Serves as an officer or director of the entity, if the entity is organized as a corporation;

(4) Is a partner in the entity, if the entity is organized as a partnership;

(5) Serves as a managing employee of the entity, including but not limited to employment as a general manager, business manager, administrator, or other position exercising, either directly or through other employees, operational or managerial control over the activities of the entity or any portion of the entity;

(6) Exercises substantive control over an entity or a critical influence over the activities of the entity or some portion of thereof, whether or not employed by the entity; or

(7) Acts as an agent of the entity.

Conviction or *convicted* has the meaning set forth in 5 U.S.C. 8902a(a)(1)(C).

Covered individual means an employee, annuitant, family member, or former spouse covered by a health benefits plan described by 5 U.S.C. 8903 or 8903a or an individual eligible to be covered by such a plan under 5 U.S.C. 8905(d).

Days means calendar days, unless specifically indicated otherwise.

Debarment means a decision by OPM’s debarring official to prohibit payment of FEHBP funds to a health care provider, based on 5 U.S.C. 8902a (b), (c), or (d) and this subpart.

Debarring official means an OPM employee authorized to issue debarments and financial sanctions under this subpart.

FEHBP means the Federal Employees Health Benefits Program.

Health care services or supplies means health care or services and supplies such as diagnosis and treatment; drugs and biologicals; supplies, appliances and equipment; and hospitals, clinics, or other institutional entities that furnish supplies and services.

Incarceration means imprisonment, or any type of confinement with or without supervised release, including but

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not limited to home detention, community confinement, house arrest, or similar arrangements.

Limited waiver means an approval by the debarring official of a health care provider's request to receive payments of FEHBP funds for items or services rendered in a defined geographical area, notwithstanding debarment, because the provider is the sole community provider or sole source of essential specialized services in a community.

Mandatory debarment means a debarment based on 5 U.S.C. 8902a(b).

Office or *OPM* means the United States Office of Personnel Management or the component thereof responsible for conducting the administrative sanctions program described by this subpart.

Permissive debarment means a debarment based on 5 U.S.C. 8902a(c) or (d).

Provider or *provider of health care services or supplies* means a physician, hospital, clinic, or other individual or entity that, directly or indirectly, furnishes health care services or supplies.

Reinstatement means a decision by OPM to terminate a health care provider's debarment and to restore his eligibility to receive payment of FEHBP funds.

Sanction or *administrative sanction* means any administrative action authorized by 5 U.S.C. 8902a or this subpart, including debarment, suspension, civil monetary penalties, and financial assessments.

Should know or *should have known* has the meaning set forth in 5 U.S.C. 8902a(a)(1)(D).

Sole community provider means a provider who is the only source of primary medical care within a defined service area.

Sole source of essential specialized services in a community means a health care provider who is the only source of specialized health care items or services in a defined service area and that items or services furnished by a non-specialist cannot be substituted without jeopardizing the health or safety of covered individuals.

Suspending official means an OPM employee authorized to issue suspensions under 5 U.S.C. 8902a and this subpart.

MANDATORY DEBARMENTS

§ 890.1004 Bases for mandatory debarments.

(a) *Debarment required.* OPM shall debar a provider who is described by any category of offense set forth in 5 U.S.C. 8902a(b).

(b) *Direct involvement with an OPM program unnecessary.* The conduct underlying the basis for a provider's mandatory debarment need not have involved an FEHBP covered individual or transaction, or any other OPM program.

§ 890.1005 Time limits for OPM to initiate mandatory debarments.

OPM shall send a provider a written notice of a proposed mandatory debarment within 6 years of the event that forms the basis for the debarment. If the basis for the proposed debarment is a conviction, the notice shall be sent within 6 years of the date of the conviction. If the basis is another agency's suspension, debarment, or exclusion, the OPM notice shall be sent within 6 years of the effective date of the other agency's action.

§ 890.1006 Notice of proposed mandatory debarment.

(a) *Written notice.* OPM shall inform a provider of his proposed debarment by written notice sent not less than 30 days prior to the proposed effective date.

(b) *Contents of the notice.* The notice shall contain information indicating the:

- (1) Effective date of the debarment;
- (2) Minimum length of the debarment;
- (3) Basis for the debarment;
- (4) Provisions of law and regulation authorizing the debarment;
- (5) Effect of the debarment;
- (6) Provider's right to contest the debarment to the debarring official;
- (7) Provider's right to request OPM to reduce the length of debarment, if it exceeds the minimum period required by law or this subpart; and
- (8) Procedures the provider shall be required to follow to apply for reinstatement at the end of his period of debarment, and to seek a waiver of the debarment on the basis that he is the